

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEREK CARROCA)	
)	
)	
Plaintiff,)	
)	Civil Action No. 12-11202-DJC
v.)	
)	
ALL STAR ENTERPRISES AND)	
COLLISION CENTER, INC. and)	
ROBERT CUCURULL)	
)	
Defendants.)	
)	

AMENDED COMPLAINT AND JURY DEMAND

I. INTRODUCTION

Plaintiff Derek Carroca was employed as an auto body repairman by the defendants. The plaintiff regularly worked in excess of 40 hours per week and was not compensated at one and one half times his regular rate of pay for his overtime hours.

II. PARTIES

1. Plaintiff Derek Carroca (“Mr. Carroca”) is a natural person who resides in Peabody, Massachusetts.

2. Defendant All Star Enterprises and Collision Center, Inc. (“All Star Enterprises”) is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business in Salem, Massachusetts.

3. Defendant Robert Cucurull (“Ms. Cucurull”) is a natural person who, on information and belief, resides in Massachusetts and is the president of All Star Enterprises.

III. JURISDICTION

4. This court has jurisdiction to address the subject matter of this action pursuant to Section 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, et seq.)

IV. FACTS

5. Mr. Carroca was hired by the defendants in August, 2010 as an auto body repairman.

6. During the course of his employment, Mr. Carroca regularly worked in excess of 40 hours per week and was not compensated in an amount equal to one and one half times his regular rate of pay for his overtime hours.

V. CAUSES OF ACTION

COUNT I

NON-PAYMENT OF OVERTIME WAGES IN VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C 201, et seq.

7. The plaintiff hereby realleges and incorporates by reference the facts and allegations contained in the preceding paragraphs of this pleading as if fully set forth herein.

8. All Star Enterprises is and at all times material hereto has been an "enterprise," within the meaning of Section 3(r) of the Fair Labor Standards Act, 29

U.S.C. 201, et seq. (hereinafter "FLSA") and an "enterprise engaged in commerce or in production of goods for commerce," within the meaning of Section 3(s) of the FLSA.

9. All Star Enterprises is and at all times material hereto has been an employer of Mr. Carroca for purposes of the FLSA.

10. Mr. Cucurull has, at all times material hereto, been an employer of Mr. Carroca for purposes of the FLSA.

11. The defendants' failure to pay Mr. Carroca overtime wages was done either willfully or with reckless disregard of the FLSA.

12. The defendant's violation of the FLSA entitles Mr. Carroca to recover his unpaid overtime wages, interest, liquidated damages (in an amount equal to his unpaid overtime wages), reasonable attorney's fees, and the costs of action.

COUNT II

NON-PAYMENT OF WAGES IN VIOLATION OF M.G.L. c. 149, §§ 148, 150

13. The plaintiff hereby realleges and incorporates by reference the facts and allegations contained in the preceding paragraphs of this pleading as if fully set forth herein.

14. The defendants failed to pay the plaintiff the full amount of his earned wages when the same became due and payable.

15. The defendants violated the Massachusetts Weekly Payment of Wages Act, M.G.L. c. 149, §§ 148, 150

16. The plaintiff has received written asset to bring this civil action from the Massachusetts Attorney General pursuant to G.L. c. 149, § 150, which is attached hereto and marked as Exhibit A.

17. The defendants' failure to comply with M.G.L. c. 149, §§ 148, 150 entitles the plaintiff to recover treble damages, interest, reasonable attorney's fees, and the costs of this action pursuant to G.L. c. 149, § 150.

VI. PRAYER FOR RELIEF AND JURY DEMAND

WHEREFORE YOUR PLAINTIFF DEREK CARROCA prays that this Honorable Court:

1. Enter final judgment against the defendants awarding the plaintiff three times his unpaid overtime wages, reasonable attorney's fees, and the costs of this action;
2. Enter final judgment against the defendants awarding the plaintiff such other relief as it deems just, equitable, and appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL COUNTS SO TRIABLE.

The Plaintiff,
DEREK CARROCA,
by his attorney,
/s/ Nicholas F. Ortiz

Nicholas F. Ortiz, BBO# 655135
Law Office of Nicholas F. Ortiz, PC
306 Dartmouth Street, Suite 501
Boston, MA 02116

(617) 716-0282

Dated: July 16, 2012

CERTIFICATE OF SERVICE

I, Nicholas F. Ortiz, hereby certify that a true copy of the above document was served upon the defendant by first-class, pre-paid mail on July 16, 2012.

All Star Enterprises and Collision Center, Inc.
171 Boston Street
Salem, MA 01970

s/ Nicholas F. Ortiz